

Jul 01, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHAD JAMES SPECHT,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO: 2:19-CV-151-RMP

ORDER SUMMARILY DISMISSING
HABEAS PETITION

Petitioner Chad James Specht, a prisoner at the Airway Heights Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

IMPROPER RESPONDENT

Petitioner names the State of Washington as Respondent. ECF No. 19 at 1. However, the proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the

1 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81
2 F.3d 891, 894–95 (9th Cir. 1996). Failure to name a proper respondent deprives
3 federal courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

4 **FAILURE TO EXHAUST**

5 Petitioner challenges his 2018 Spokane County guilty plea to the charge of
6 First Degree Assault – Domestic Violence. He was sentenced to 115 months
7 incarceration. Petitioner indicates that he did not appeal. ECF No. 1 at 2.

8 In his grounds for relief, Petitioner argues that the State of Washington has
9 no jurisdiction to decide federal constitutional matters. ECF No. 1 at 5–12. It has
10 long been settled that state courts are competent to decide questions arising under
11 the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the
12 duty of the state court, as much as it is that of the federal courts, when the question
13 of the validity of a state statute is necessarily involved, as being in alleged
14 violation of any provision of the federal constitution, to decide that question, and to
15 hold the law void if it violate that instrument.”); *see also Worldwide Church of*
16 *God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as
17 competent as federal courts to decide federal constitutional matters). Therefore,
18 Petitioner’s arguments to the contrary lack merit.

19 Additionally, before a federal court may grant habeas relief to a state
20 prisoner, the prisoner must exhaust the state court remedies available to him. 28
21 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally

1 requires that a prisoner give the state courts an opportunity to act on his claims
2 before he presents those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S.
3 838, 845 (1999). A petitioner has not exhausted a claim for relief so long as the
4 petitioner has a right under state law to raise the claim by available procedure. *See*
5 *id.*; 28 U.S.C. § 2254(c).

6 To meet the exhaustion requirement, the petitioner must have “fairly
7 present[ed] his claim in each appropriate state court (including a state supreme
8 court with powers of discretionary review), thereby alerting that court to the
9 federal nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,
10 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court
11 by describing the factual or legal bases for that claim and by alerting the state court
12 “to the fact that the ... [petitioner is] asserting claims under the United States
13 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249
14 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in
15 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513
16 U.S. at 365–66.

17 Furthermore, to fairly present a claim, the petitioner “must give the state
18 courts one full opportunity to resolve any constitutional issues by invoking one
19 complete round of the State's established appellate review process.” *O'Sullivan*,
20 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
21 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275

1 (1971). It does not appear from the face of the Petition or the attached documents
2 that Petitioner has exhausted his state court remedies as to each of his grounds for
3 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state
4 court remedies.

5 **LEGALLY FRIVOLOUS GROUNDS FOR FEDERAL HABEAS RELIEF**

6 Petitioner asserts that the Washington state constitution contradicts the
7 federal constitution regarding the Fifth Amendment right to “presentment or
8 indictment of a Grand Jury.” He claims “no bill of indictment” was brought
9 against him rendering his arrest, conviction and imprisonment illegal.

10 Petitioner seems to argue that because the state courts have defied “federally
11 established procedures and processes for the adjudication of crimes” only “a court
12 of federal jurisdiction” has jurisdictional authority over his claims. His bald
13 assertion that “due process of the law was ignored” is unsupported by his factual
14 allegations.

15 The United States Supreme Court stated long ago: “Prosecution by
16 information instead of by indictment is provided for by the laws of Washington.
17 This is not a violation of the Federal Constitution.” *Gaines v. State of Washington*,
18 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the contrary
19 presented in his four grounds for federal habeas relief are legally frivolous.

20 Because it plainly appears from the petition and the attached exhibits that
21 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** that the petition,

1 **ECF No. 1**, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254
2 Cases in the United States District Courts. All pending motions are **DENIED as**
3 **moot.**

4 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
5 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
6 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
7 taken in good faith, and there is no basis upon which to issue a certificate of
8 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
9 appealability is therefore **DENIED.**

10 **DATED** July 1, 2019.

11
12 *s/ Rosanna Malouf Peterson*
13 ROSANNA MALOUF PETERSON
14 United States District Judge
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